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Paper No. 6

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DEC 03 2002

In re Application of : **OFFICE OF PETITIONS**
Yifan Dai :
Application No. 10/010,644 : **ON PETITION**
Filed: November 8, 2001 :
Attorney Docket No. 96-2088-B :

This is a decision on the petition under 37 CFR 1.137(b), filed November 15, 2002, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed January 10, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 11, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

The Notice to File Missing Parts of Nonprovisional Application mailed January 10, 2002, additionally required the submission of substitute drawings in compliance with 37 CFR 1.84 because the "more than one figure is present and each figure is not labeled "Fig." with a consecutive Arabic number (1,2, etc.) Or an Arabic numeral and capital letter in the English alphabet (A,B, etc.) (see 37 CFR 1.84(u)(1))." Since petitioner has filed to submit the reply required by 37 CFR 1.137(b)(1), the petition must be dismissed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$720.00 extension of time submitted with the petition on November 15, 2002 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The Associate Power of Attorney filed November 15, 2002 is noted and made of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: U.S. Patent and Trademark Office
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Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

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